



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C., 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

CERTIFIED MAIL RETURN RECEIPT REQUESTED

IN THE MATTER OF: Daimler AG, Mercedes-Benz USA, Inc.

ATTENTION:

Matthew Everitt
General Counsel for Mercedes-Benz USA
Mercedes-Benz USA, LLC
303 Perimeter Center North, Suite 202
Atlanta, GA 30346

Request for Information under Section 208(a) of the Clean Air Act, 42 U.S.C. § 7542(a)

The United States Environmental Protection Agency (EPA) hereby requires Daimler AG, Mercedes-Benz USA, Inc. (collectively, Daimler) to submit certain information as part of an EPA investigation to determine Daimler's compliance with Section 203 of the Clean Air Act (CAA), 42 U.S.C. § 7522, and the applicable regulations at 40 C.F.R. Part 86. Exhibit B specifies the information that you must submit. Exhibit C provides instructions for your response to this request. Exhibit D provides definitions for some of the terms used in this request.

The EPA is issuing this Request for Information (Request) under Section 208(a) of the CAA, 42 U.S.C. § 7542(a). Under Section 208(a) of the CAA, the EPA may require any person who is subject to the CAA to provide information necessary to determine whether the person has acted in compliance with these requirements and the regulations promulgated thereunder.

You must submit the information requested within 10 calendar days from the date of this letter.

Failure to provide the required information may result in the initiation of a civil action pursuant to Section 205(b) of the CAA, 42 U.S.C. § 7524(b). Failure to provide all requested information in its entirety, and in the format requested, may result in additional inquiries and penalties. It is important that your responses be clear, accurate, and complete. The EPA will regard submitted information that is misleading, false, incomplete, or submitted without regard to its accuracy as a

information that is misleading, false, incomplete, or submitted without regard to its accuracy as a violation of the CAA or criminal statutes. The EPA may use any information submitted in response to this request in an administrative, civil, or criminal action.

Finally, Daimler must submit all requested information under an authorized signature with the following certification (provided in Appendix E):

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

You are entitled to assert a business confidentiality claim covering all or part of the information you submit in response to this request, in accordance with the procedures described in the Confidentiality of Business Information (CBI) regulations, 40 C.F.R. Part 2, Subpart B. However, no such CBI claim may be made with respect to emissions data as defined at 40 C.F.R. § 2.301(a)(2). You must specify the page, paragraph and sentence when identifying the information subject to your claim. Exhibit A specifies the assertion and substantiation requirements for business confidentiality claims. The EPA may, without further notice, provide the public with any information not subject to a CBI claim.

Please submit all requested information, via courier service or overnight delivery, to:

Kellie Ortega
US Environmental Protection Agency
Air Enforcement Division
Mail Code 2242A, Room 2111C
1200 Pennsylvania Ave, NW
Washington, DC 20460 mail or 20004 courier (note Room 2111C WJCS on courier packages)

Any questions concerning this Request should be directed to Ms. Ortega at 202-564-5529.

March 14, 2017
Date



Evan Belser, Chief
Vehicle and Engine Enforcement Branch
Air Enforcement Division
Office of Civil Enforcement

EXHIBIT A

CONFIDENTIAL BUSINESS INFORMATION

You may assert a business confidentiality claim covering all or part of the information you provide in response to this Information Request for any business information entitled to confidential treatment under Section 208(c) of the CAA, 42 U.S.C. § 7542, and 40 C.F.R. Part 2, subpart B. Under Section 208(c) of the CAA, you are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Under 40 C.F.R. Part 2, subpart B, business confidentiality means “the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information.” *See* 40 C.F.R. § 2.201(e).

Information covered by a claim of business confidentiality will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in Section 208(c) of the CAA and 40 C.F.R. Part 2, subpart B. The EPA will construe your failure to furnish a business confidentiality claim with your response to this Information Request as a waiver of that claim, and the information may be made available to the public without further notice to you.

To assert a business confidentiality claim, you must place on (or attach to) all information you desire to assert as business confidential either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time you submit your response to this Information Request. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling by the EPA. You should indicate if you desire confidential treatment only until a certain date or until the occurrence of a certain event.

The criteria the EPA will use in determining whether material you claim as business confidential is entitled to confidential treatment are set forth at 40 C.F.R. §§ 2.208 and 2.301. These regulations provide, among other things, that you must satisfactorily show that: (1) the information is within the scope of business confidentiality as defined at 40 C.F.R. § 2.201(e), (2) that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, (3) the information is not and has not been reasonably obtainable by legitimate means without your consent, and (4) the disclosure of the information is likely to cause substantial harm to your business’ competitive position. *See* 40 C.F.R. § 2.208 (a)-(e). Emission data, as defined at 40 C.F.R. § 2.301(a)(2), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, subpart B. *See* 42 U.S.C. § 7542(c); 40 C.F.R. § 2.301(e).

If you assert a claim of business confidentiality in connection with information and documents forwarded in response to this request for information, in accordance with 40 C.F.R. § 2.204(e)(4), the EPA is requesting that you answer the following questions with respect to any information or document for which you assert a claim of business confidentiality:

1. What specific portions of the information are alleged to be entitled to confidential treatment? Specify by page, paragraph and sentence when identifying the information subject to your claim.
2. For what period of time do you request that the information be maintained as confidential, *e.g.*, until a certain date, until the occurrence of a specified event or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, specify that event. Additionally, explain why the information should be protected for the time period you've specified.
3. What measures have you taken to protect the information claimed as confidential from undesired disclosure? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
6. For each category of information claimed as confidential, explain with specificity whether disclosure of the information is likely to result in substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effect. How could your competitors make use of this information to your detriment?
7. Is there any other explanation you deem relevant to the EPA's determination of your business confidentiality claim that is not covered in the preceding questions? If so, you may provide such additional explanation.

You must furnish comments to the above questions concurrent with your response to this Information Request if you have claimed any information as business confidential. *See* 40 C.F.R. § 2.204(e)(2). Pursuant to 40 C.F.R. § 2.205(b)(2), you may request an extension of this deadline. The EPA will construe your failure to furnish timely comments as a waiver of your confidentiality claim, consistent with 40 C.F.R. § 2.204(e)(1). Please submit your comments to:

Kellie Ortega
US Environmental Protection Agency
Air Enforcement Division
Mail Code 2242A, Room 2111C

1200 Pennsylvania Ave, NW
Washington, DC 20460 mail or 20004 courier (note Room 2111C WJCS on
courier packages)

Pursuant to 40 C.F.R. § 2.205(c), you are hereby advised that information you submit as part of your comments may be entitled to confidential treatment if, when it is received by EPA, it is marked in accordance with 40 C.F.R. § 2.203(b). As required by 40 C.F.R. § 2.204(e)(6), you may assert a business confidentiality claim covering all or part of your response to these questions, as provided in 40 C.F.R. § 2.203(b). By submitting this information, you are consenting to a limited release of any confidential business information to EPA legal interns pursuant to 40 C.F.R. § 2.209(f). EPA's legal interns are required to sign confidentiality agreements as a requirement of their participation in EPA related matters. Information covered by such a business confidentiality claim will be disclosed by EPA only to the extent, and by means of the procedures, set forth in Section 114(c) of the Clean Air Act (the Act) and 40 C.F.R. Part 2. EPA will construe the failure to furnish a confidentiality claim with your comments as a waiver of that claim, and the information may be made available to the public without further notice to you.

EXHIBIT B

INFORMATION REQUEST

Daimler must submit the following information to the United States Environmental Protection Agency pursuant to § 208 of the CAA, 42 U.S.C. § 7542.

1. Detailed organizational charts (corporate and personnel) for Daimler AG, Mercedes-Benz USA, Inc. (collectively, Daimler) and any affiliates that were involved in the development, design, testing, calibration, approval, or implementation of the Subject Engine Management System Software. Include historical organizational charts as necessary in order to cover the entire time when the Subject Engine Management System Software was developed, tested, calibrated, approved, and implemented.
2. For each Subject Test Group, provide the number of Subject Vehicles sold in the United States by make and model.
3. Describe the roles Daimler and Bosch had in developing the emission control systems for the Subject Test Groups.
 - a. Who were and are the primary points of contacts at Daimler and Bosch for the hardware and software development?
 - b. Describe each company's role in determining the engine and exhaust after treatment hardware for each Subject Test Group.
 - c. Describe each company's role in developing AECDs and final emission calibrations.
 - i. Describe each company's role in approving AECDs and emissions calibrations.
 - ii. Describe the process for making changes to the AECDs and emissions calibrations.
4. For each Subject Test Group, provide a list of all AECDs not reported in the application for certification.
 - a. For each AECD provide a justification, if any, (i.e., does not reduce the effectiveness of the emission control system; is substantially included in the Federal emission test procedure; is necessary to protect the vehicle against damage or accident; is not used beyond engine starting; etc.) for why each AECD is not a defeat device.
 - i. For each AECD justified as not reducing the effectiveness of the emission control system, provide emissions test data or engineering rationale to support this justification.

- ii. For each AECD justified as substantially included in the Federal test procedure, provide test data demonstrating when and to what extent the AECD is active during the Federal test procedure.
 - iii. For each AECD justified as being necessary to protect the vehicle against damage or accident, describe how the AECD is designed to reduce the effectiveness of the emission control system only when absolutely necessary and to the least extent possible.
- 5. For each Subject Test Group, provide a description of the SCR system and associated AECDs.
 - a. Provide a description of the following hardware:
 - i. SCR catalyst (copper zeolite, iron zeolite, other) and explain why (conversion efficiency, ammonia storage capability, durability, cost, etc.) the catalyst was chosen.
 - ii. SCR dosing system including dosing module, dosing injector and exhaust gas mixer and explain how the system was designed to optimize DEF mixing in the exhaust stream.
 - iii. Provide the name of the supplier of the hardware and software for the SCR system.
 - b. Provide all conditions which activate and deactivate SCR dosing.
 - c. Describe the thermal management strategy used to promote SCR dosing.
 - i. List the entry conditions for thermal management strategy.
 - ii. List exit conditions for the thermal management strategy.
 - iii. Describe how the thermal management strategy modulates the emission control system to heat the exhaust to the required temperature.
 - iv. List conditions under which thermal management will not be active and SCR dosing temperature is not met. If not already answered in response to Question 4, provide a justification for turning off thermal management when SCR dosing temperature is not met.
 - d. Provide the equations for determining the amount of diesel exhaust fluid to be dosed.

- e. List the entry and exit conditions with specific calibration values for the fill mode and feed forward mode.
 - i. Explain the need for the two dosing modes and why feed forward mode must be activated by each entry condition.
 - ii. Identify each entry condition which Daimler added to the base design of the Bosch system.
 - iii. If not provided in response to Question 4, provide data demonstrating when and to what extent the feed forward strategy is active during emissions sampling for each EPA certification test cycle.
 - iv. Provide data demonstrating the amount of time each mode is active in actual use.
 - f. Provide a table(s) of SCR target efficiencies or tailpipe NO_x mass rates as a function on engine speed, engine load and/or other parameters, as appropriate, to document off-cycle NO_x control.
6. For each Subject Test Group, describe the development process to meet 2013 OBD requirements.
 - a. When did the development process begin?
 - b. When was the issue of NH₃ slip triggering false OBD MILs discovered?
 - c. List all hardware changes made to the Subject Test Groups to meet the 2013 OBD requirements. If no changes were made to the DEF dosing, SCR catalyst, or sensors (NO_x or addition of NH₃) to address the NH₃ slip issue, explain why not.
 - d. Describe all software changes made to meet the new requirements including any to address NH₃ slip.
 - e. List all meetings with the California Air Resources Board and/or EPA in which compliance with the new OBD requirements were discussed. Identify all meeting in which the NH₃ slip issue was discussed.
 7. Provide all PEMS data obtained on the Subject Test Groups in spreadsheet (.xls) format.
 8. Identify each person responsible for responding to this Request, including his or her title, and the request(s) to which he or she responded.

EXHIBIT C

INSTRUCTIONS

1. This Request is a continuing request. You must promptly supplement your response in the event that you learn that you possess responsive documents or information not yet produced, or gain possession, custody or control of responsive documents or information after initially responding to this Request.
2. For both paper and electronic records, provide documents in their original language and, if the original language is not English, an English translation.
3. Paper documents should be produced in legible copies, organized by request and, within each request, by component and custodian. For electronically stored information, including but not limited to computer files or disks, produced in response to this information request:
 - a. Provide detailed instructions sufficient to enable the federal government to access and retrieve the data contained in each such file or disk.
 - b. Deliver emails in their native format, preferably from the database (folder) itself and not as individual emails. Microsoft Outlook emails should be delivered for each custodian in PST format; Lotus Notes emails should be delivered in NSF format. Other emails should be produced in comparable formats.
 - c. If Daimler maintains responsive information in a commercially available software format for spreadsheets, word processing documents, presentations, photographs, etc. (e.g., Microsoft Excel, Corel WordPerfect), then:
 - i. Files should be delivered in their native format.
 - ii. Native files should be collected using a method that preserves all of the files' metadata, folder location and generates a "hash" value for verification that an exact copy of the file was collected.
 - iii. Files should be organized on the media in folders by component and custodian.
 - iv. AutoCAD Files, GIS Data, and other compound files should be produced in native format on its own media. A native file viewer should also be included in order to view the data.
 - d. If Daimler maintains responsive information in an enterprise database or archiving system, the system must be made available to the government for inspection including any manuals, field lists, data dictionaries, indices, etc. for the government to use to formulate methods for identifying and extracting responsive information into a usable form. Information identified as responsive within the system must be extracted in a forensically sound manner and provided with documentation of the procedures used to identify and extract the responsive information from the system.
 - e. Daimler shall not de-duplicate its production without prior notice to and consultation with the EPA.
 - f. Label all media with the name of the company, the source of the information, and a tracking number.
 - g. Ensure that all submissions of electronic data are free of computer viruses and that all

passwords protecting files or media are removed or provided with the media.

4. Where documents or information necessary for a response are not in your possession, custody, or control, indicate in your response why such information is not available or in your possession, custody or control, and identify any source that either possesses or is likely to possess such information.
5. All submitted documents should be copies and not original documents. Provide two complete sets of the requested documents and information.
6. Indicate on each document produced the number of the question to which it corresponds.
7. Where Daimler has previously submitted to the EPA or the California Air Resources Board (CARB) information requested herein, re-submit the information in the format requested. Identify the material that was previously provided, the date on which it was provided, and the person at the EPA or CARB to whom it was provided.

EXHIBIT D

DEFINITIONS

1. All terms used in this Information Request will have their ordinary meaning unless such terms are defined in the CAA, 42 U.S.C. §§ 7401 *et seq.*, or the regulations found at 40 C.F.R. Part 86.
2. The terms “document” and “documents” means any object that records, stores, or presents information, and includes writings, memoranda, records, or information of any kind, formal or informal, whether wholly or partially handwritten or typed, whether in computer format, memory, or storage device, or in hardcopy, including any form or format of these. The term includes electronic mail and text messages. If in computer format or memory, each such document must be provided in translation to a form useable and readable by the EPA, with all necessary documentation and support. All documents in hard copy also should include attachments to or enclosures with any document.
3. The term “person” includes a corporation, partnership, limited liability company, sole proprietorship, joint venture, or any formal or informal entity, organization or association.
4. The terms “you” and “your” and “Daimler” include Daimler AG, Mercedes-Benz USA, Inc., and any subsidiaries, affiliates, predecessors, successors, and assigns.
5. “Affiliate” or “affiliated” is used to indicate a relationship to a specified person, and means any person that, directly or indirectly or through one or more intermediaries, owns or controls, is owned or controlled by or is under common ownership or control with such person.
6. The term “software” means any tangible or non-tangible machine-readable code, information, or instructions.
7. The term “Subject Test Groups” includes all motor vehicles that are covered or purportedly covered by the EPA certificates of conformity for the following EPA test groups:
9MBXT03.0U2A, 9MBXT03.0U2B, AMBXT03.0HD1, AMBXT03.0HD2,
AMBXT03.0U2A, AMBXT03.0U2B, BMBXT03.0HD1, BMBXT03.0HD2,
BMBXT03.0U2A, BMBXT03.0U2B, BMBXT03.0U2B, CMBXT03.0HD1,
CMBXT03.0HD2, CMBXT03.0U2A, CMBXT03.0U2B, CMBXT03.0U2A,
CMBXT03.0U2B, DMBXT02.2U2A, DMBXT03.0HD1, DMBXT03.0HD2,
DMBXT03.0U2A, DMBXT03.0U2B, DMBXT03.0U2C, DMBXT03.0U2A,
DMBXT03.0U2B, EMBXT02.2U2A, EMBXT02.2HD1, EMBXT02.2HD2,
EMBXT03.0HD1, EMBXT03.0HD2, EMBXT03.0U2A, FMBXT02.1U2A,
FMBXT02.1HD1, FMBXT02.1HD2, FMBXT02.1HD3, FMBXT02.1HD4,
FMBXT02.1U2A, FMBXT03.0HD1, FMBXT03.0HD2, FMBXT03.0HD3,
FMBXT03.0HD4, FMBXT03.0U2A, GMBXT02.1HD1, GMBXT02.1HD2,
GMBXT02.1HD3, GMBXT02.1HD4, GMBXT02.1U2A, GMBXT03.0HD1,

GMBXT03.0HD2, GMBXT03.0HD3, GMBXT03.0HD4, GMBXT03.0U2A, and GMBXV02.1U2B.

8. The term “Subject Vehicle” means any motor vehicle that is covered or purportedly covered by the above-listed test groups.
9. The term “Subject Engine Management System Software” means any and all of the following:
 - a. any software on or in any Subject Vehicle that:
 - i. detects any condition of the federal test procedures (as specified in 40 C.F.R. Parts 85 and 86 or in EPA guidance),
 - ii. affects any element of design of that Subject Vehicle’s emission control system based on any such detection;
 - b. Any and all auxiliary emission control devices (as defined at 40 C.F.R § 86.1803-01 (*auxiliary emission control device*)) on or in any Subject Vehicle that was not disclosed in the application for an EPA certificate of conformity that purportedly covers that Subject Vehicle;

APPENDIX E

CERTIFICATION

You are submitting the enclosed documents in response to the U.S. Environmental Protection Agency's ("EPA") Request for Information, issued pursuant to Section 208(a) of the Clean Air Act, to determine compliance with the Clean Air Act and its affiliated regulations.

I certify that I am fully authorized by _____ [corporate affiliation] to provide the above information on its behalf to EPA.

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, including the possibility of fines or imprisonment pursuant to Section 113(c)(2) of the Clean Air Act, 42 U.S.C. § 7413(c)(2), and 18 U.S.C. §§ 1001 and 1341.

Date: _____

Name (Printed): _____

Signature: _____

Title: _____